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**DREYER BOYAJIAN LLP**  
ATTORNEYS AND COUNSELLORS AT LAW  
75 COLUMBIA STREET  
ALBANY, NY 12210  
TELEPHONE: (518) 463-7784  
FACSIMILE (518) 463-4039  
<http://www.dreyerboyajian.com>

WILLIAM J. DREYER  
DONALD W. BOYAJIAN  
BRIAN W. DEVANE  
JOHN B. CASEY  
CRAIG M. CRIST  
JAMES R. PELUSO  
SHANNON O'LOUGHLIN  
APRIL M. WILSON

CHRISTOPHER A. AMATO  
CHRISTOPHER M. SCARINGE  
(of counsel)

July 21, 2006

Alan Steinberg  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007

**Re: EPA's Unlawful Interference With Cayuga Nation Sovereignty**

Dear Administrator Steinberg:

This firm is litigation counsel to Chief Samuel George, Chief William Jacobs, Chester Isaac, Heron Clan Mother Bernadette Hill and Bear Clan Mother Inez Jimerson. As you know, the Bureau of Indian Affairs ("BIA") has recognized Chief George, Chief Jacobs, and Mr. Isaac as members of the Cayuga Nation Council of Chiefs, Representatives and Clan Mothers ("Council"). The Council is the BIA-recognized governing body of the Cayuga Nation. BIA has also recognized Ms. Hill and Ms. Jimerson as the Clan Mothers of their respective clans. This letter is submitted in response to your July 17, 2006 letter to various Cayuga Nation individuals, including this firm's clients.

Your July 17 letter states that "[u]ntil there is clarification from the Council of Chiefs, represented as consensus of the chiefs (which we understand is the Cayuga tradition), Region 2 will refrain in the future from awarding any financial assistance either to HETF on behalf of the Cayuga Nation or directly to the Cayuga Nation." As set forth below, your July 17 decision to terminate environmental funding was made without consultation or input from members of the Council represented by this firm; directly contradicts EPA's prior determination on this same issue; denigrates Cayuga Nation sovereignty; and violates EPA's trust responsibility to the Cayuga Nation.

As you are aware, this issue was already reviewed and determined by EPA a mere nine months ago. At that time, Clint Halftown, an individual Cayuga citizen, had written two letters to EPA claiming that the Cayuga Nation was withdrawing from HETF and that the Nation would not participate in the annual meeting between EPA and the Haudenosaunee nations. In response, this firm submitted a letter explaining the traditional form of Cayuga government and the fact

that Mr. Halftown does not and cannot speak for the Cayuga Nation or its Council. By letter dated October 7, 2005, you stated:

With regard to Mr. Halftown's statements that the Cayuga Nation is formally withdrawing from the [HETF], EPA seeks further clarification. By letter dated July 31, 2001, EPA was notified that the Cayuga Nation Council of Chiefs supported the development of an environmental program through the assistance of HETF . . . Consistent with that notification, EPA has been providing, and continues to provide, General Assistance Program (GAP) funding through the HETF for the benefit of the Cayuga Nation. We asked Mr. Halftown to clarify whether or not the Cayuga Nation Council of Chiefs has withdrawn its support for the HETF. It is, of course, EPA's intention to act on this matter consistent with the will of the Cayuga Nation Council of Chiefs.

(Emphasis added).

As EPA's October 7 letter acknowledges, the Council reached a consensus decision in 2001 to support the development of an environmental program through HETF. Until now, EPA has honored that Council decision. The Council has never reached a consensus decision to withdraw from HETF or to otherwise modify or revoke its 2001 decision on this matter. Thus, it is unclear on what basis EPA has now – without soliciting any additional input from Cayuga Council members – determined to ignore the Council's 2001 decision.

EPA's decision to revisit this issue was apparently based on multiple letters and phone calls to EPA from Mr. Halftown and from Mr. Halftown's lawyer, Daniel French.<sup>1</sup> As EPA has been previously informed, BIA has explicitly recognized that no individual, including Mr. Halftown, possesses authority to make unilateral decisions on behalf of the Cayuga Nation. To the contrary, BIA has repeatedly and categorically recognized that the Council is the sole governing body of the Cayuga Nation, and that the Council reaches decisions based on consensus. EPA has been repeatedly advised that the letters sent to EPA by Mr. Halftown purportedly on behalf of the Cayuga Nation were not authorized by the Council, that the letters do not express the consensus of the Nation's Council, and that EPA's reliance on Mr. Halftown's

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<sup>1</sup> In his letters to EPA, Mr. French has consistently misrepresented himself as counsel to the Cayuga Nation. Mr. French's client is Clint Halftown, not the Cayuga Nation. The Council has never engaged Mr. French to perform legal services on behalf of the Nation. Additionally, for the reasons stated above, Mr. French's claim in his June 30, 2006 letter that "the Cayuga Nation will no longer participate in the HETF program" is baseless because there has been no consensus decision by the Council to withdraw from HETF. We also note that Mr. French's second June 30 letter incorrectly states that he is requesting documents relating to the Nation's participation in HETF "[a]t the direction of the Cayuga Nation Council." The Council has not directed Mr. French to take any such action.

letters is therefore misplaced and in denigration of the Nation's sovereignty.

It is disturbing that the members of the Council were not informed of EPA's decision to revisit this issue which all believed to have been laid to rest. EPA's failure to inform members of the Council that EPA was reconsidering its prior determination in this matter falls far short of the consultation protocol that the Haudenosaunee are attempting to establish with EPA. EPA's actions in this regard also raise due process concerns regarding its failure to provide the Nation's Council members with an opportunity to be heard on this matter prior to termination of funding.

EPA's July 17<sup>th</sup> decision to terminate funding to the Cayuga Nation's HETF program, without notice, due process or even the slightest attempt to consult with the Nation and its leaders, is so fundamentally in violation of the spirit and letter of consultation, as required by Executive Order 13175, EPA's own regulations and guidelines and the numerous drafts of "consultation agreements" that have been exchanged with the EPA and various Haudenosaunee governments, that it is very likely to totally de-rail all attempts by EPA to reach consultation agreements with any Haudenosaunee governments. Your decision will scuttle years of work and dozens of drafts of consultation agreements. We urge you to re-consider your July 17<sup>th</sup> reversal before it does any further harm to these efforts.

EPA's sudden and unexplained decision to refuse to honor the Council's 2001 decision is of grave concern because it denigrates the Nation's sovereignty. As EPA has been informed in previous correspondence, the Cayuga Nation is governed by consensus decision making by the Nation's Council. Once the Council makes a decision, that decision cannot be modified or overturned in the absence of a subsequent consensus decision by the Council. As you have been previously informed, the Council has not amended or revoked its 2001 decision.

The fact that a single Cayuga citizen (or his attorney) now claims that the Nation has "withdrawn" from HETF has no bearing or effect on the Council's prior decision in this matter. Mr. Halftown's purported dissatisfaction with HETF is nothing more than an effort to consolidate unilateral control over all funds flowing to the Nation from the federal government.<sup>2</sup> In any event, disaffection by a single Cayuga citizen is not sufficient grounds for undermining a consensus decision by the Council.<sup>3</sup> Neither Mr. Halftown nor his attorney have offered any authority in Cayuga law, tradition or customs that allows a single Cayuga citizen to unilaterally repudiate a formally adopted Council resolution reached by consensus. In fact, no such authority exists. For EPA to lend credence to the specious claims of Mr. Halftown and his attorney is to

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<sup>2</sup> Mr. Halftown already exerts unilateral control over federal funds received from BIA, and has persistently refused to provide an accounting of such funds to the members of the Council.

<sup>3</sup> We note that Mr. Halftown's business enterprises have been the beneficiary of past HETF funding including, for example, free inspection of underground storage tanks at his gas station business.

denigrate the Nation's sovereignty and impermissibly interfere in the Nation's right to self-government.

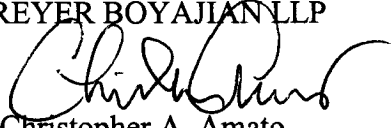
Indeed, it is obvious that the Nation's government would be permanently hobbled were unilateral claims like Mr. Halftown's to be given credence. Under that scenario, no decision of the Council would ever be final, because individual Council members could subsequently undermine the decision by changing their mind weeks, months, or even (as in this case) years after a consensus decision had been reached. The inevitable outcome of such a system would be complete paralysis of the Nation's government, because no outside government or entity could rely on a decision of the Nation's Council if decisions could be so easily disavowed.<sup>4</sup>

Your letter states that "[i]t is Region 2's intention to act in this matter consistent with the will of the Cayuga Nation." The will of the Cayuga Nation has been expressed in its 2001 consensus decision to support development of a Cayuga environmental program through HETF. That decision has been neither amended nor revoked by the Council. We therefore request that you honor the will of the Cayuga Nation as expressed in the Council's 2001 decision.

For the reasons set forth above, we urge you to reconsider the decision set forth in your July 17 letter. We also request a meeting with you at your earliest convenience to discuss these issues.

Very truly yours,

DREYER BOYAJIAN LLP



Christopher A. Amato  
Of Counsel

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cc: Joyce King, HETF Director  
Joseph Heath, Esq.

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<sup>4</sup> For this reason, your claim that a "clarification" from the Council is needed on this issue is unfounded. The Council has already spoken on this issue, and absent a further consensus decision amending or nullifying that decision, the Council's 2001 decision stands. Your request for a clarification is also at odds with the prior practice of EPA, which has been to honor the Council's 2001 decision without requiring the Council to reaffirm that decision on an annual basis.